

The CURE

Contract User's Resource for Excellence

The "CURE" is a quarterly newsletter of the State Controller's Office

Volume 6, Issue 1

February 2000

News From The SCO

A State Controller's Office Update

By John Ivy, DFP

⇒ CCIT Meeting

The February CCIT Meeting will be held on Wednesday, February 16th from 9:00 a.m. to noon in Building 100 at Camp George West. This is the same place where the November meeting was held. For those of you not familiar with Camp George West, it is located on the East side of Golden on Old Golden Road. It is about fifteen minutes from downtown Denver. If you missed the last CCIT meeting and are not sure how to get there, a map was attached. Camp George West will continue to be the location for our CCIT meetings.

⇒ GSS Reorganizes to Provide Better Service

Continuing its efforts to provide better customer service, GSS has combined several of its divisions to align common tasks and streamline its operations. In November the SCO merged with the DOP to create the new Division of Finance and Procurement (DFP). In December the Division of Real Estate Services merged with the Division of Central Services. This larger division will retain the name Central Services.

During the month of January some fine tuning occurred when State Buildings Programs was transferred from DFP to DCS and combined with the Real Estate Programs Section and the Construction Design and Management Section. This new unit adopted an old familiar name, State Buildings and Real Estate Programs. Larry Friedberg heads up the new unit and will be responsible for both capital construction and leases.

The remainder of what was the Division of Real Estate Services has changed its name back to the Capitol Complex and is managed by Frank Lombardi.

⇒ State Fiscal Rule Waivers

Effective March 1, 2000 as a result of a recent State Fiscal Rule Hearing, the State Fiscal Rule waiver process has been simplified. The change is a result of the State Controller adopting new language for the Administrative Hardship provision of the State Fiscal Rules.

The change eliminates the requirement for a waiver request to go through the chief executive officer. All that will be necessary after March 1st is that the CEO be notified of the request. *Please see page 5 for additional information on State Fiscal Rule waivers.*

Central Approvers Names and Numbers

NAME	PHONE #	FAX #
State Controller's Office		
Fiscal Rule Waivers and Statutory Violations		
John Ivy	303-866-3765	303-866-3569
Privatization Program		
Yvonne Anderson	303-866-2862	303-866-3569
Contract Unit		
Phil Holtmann	303-866-3809	303-866-3569
Chris Trujillo	303-866-3820	303-866-3569
Attorney General's Office:		
David Kaye	303-866-5142	303-866-5671
James Martin	303-866-5227	303-866-5671
Rod Wolthoff	303-866-5027	303-866-5671
State Buildings and Real Estate Programs:		
Carol Lieber (SBP)	303-866-3158	303-894-7478
Bob Marshall (REP)	303-866-2208	303-866-4367
State Purchasing:		
Kay Kishline	303-866-6181	303-894-7444
Jane Lopez	303-866-6146	303-894-7478

NOTE: You may e-mail any of the above by using the following format: **firstname.lastname@state.co.us**

Privatization Program News from the Department of Personnel

By Yvonne Anderson, DFP

AN UPDATE ON THE PERSONNEL RULES & THE ANNUAL REPORT

Over the last 17 months the Attorney General's Office, human resource professionals and this program, have been working on condensing the Personnel rules as they relate to the Privatization Program. We have tried to eliminate redundancies and have instead expounded on the interpretation of CRS 24-50-501 - 514 when needed in the Revised Version of the rules. However, before these rules can be adopted the department will need to conduct a rule hearing in order to make the revisions official. As we all are aware, the Privatization issue is a sensitive matter to employees and with the employee unions as we continue to see lawsuits filed against the state. Over the next few months, we will be meeting with and inviting comments from these groups before we proceed with a rule hearing. In addition, we have heard your frustrations and will be proposing that the reporting requirements for the annual report be made more meaningful by:

1. Not requiring agencies to report personal services for less than \$3,000 in order to be more consistent with the Fiscal Rules; and
2. Requiring agencies to report only personal services that 'directly impact' the state classified workforce (this would be limited to agencies that have an agency-wide program waiver in place, currently on file with the State Controller's Office, granted and approved by the Privatization Program).

A REMINDER ON CONTRACT AMENDMENTS AND CONTRACT MODIFICATIONS

This program recognizes contract amendments and contract modifications to mean one or more of the following and therefore requires a Privatization review:

- A. Change in the scope of services from the **original** contract.
- B. Change in the dollar amount from the **original** contract.
- C. Change in the length of the agreement from the original contract.

Note: This may take the form of a funding letter, supplemental, change order, etc) **Please Remember if your agency has a Privatization Program Waiver in place and/or CATF waiver in place, all contract amendments still need Privatization review and approval.**

Procurement Training Available

By Tara Drummond, SPO

The Mission of the State Procurement Office is to manage the purchasing processes of State Government and to provide quality Education, Leadership, and Support.

Through the continuous improvement process in these areas, we have designed a new basic Procurement training program that has incorporated the "experts" in their fields: Phil Holtmann, Fiscal Rules; Yvonne Anderson, Privatization Program; Rod Wolt-hoff, Attorney General's Office, Carol Lieber, State Buildings; J.J. Jackson, Central Services; Jennie Readey, Ethics; and Jill Vaughan, COFRS to give one hour presentations in the training classes. An overview is given about each discipline, what rules apply, and why compliance is necessary.

We also have designed a new three-hour COFRS class that will help buyers navigate through the COFRS Extended Purchasing System with a hands on approach. There is also a specification exercise that provides proof that a box just isn't a box. The basic procurement class is given three times each month. Please contact Bonnie Mulroy in the State Purchasing Office at 303-866-6100 to reserve a seat.

Key to CURE Abbreviations

Attorney General's Office	AGO
Central Approvers Task Force	CATF
Colorado Contract Improvement Team	CCIT
General Support Services	GSS
State Buildings and Real Estate Programs	SBP
State Contract Unit	SCU
State Controller's Office	SCO
State Purchasing Office	SPO

Procurement Integrity

By Rod Wolthoff, AGO

You are a government employee who, as a purchasing agent for the State Department, regularly buys supplies and services for the Department. You and your wife are neighbors with the CEO of a construction company. This construction company regularly contracts with your Department. You and the CEO golf together frequently and regularly discuss government business. This past week, the CEO presents you with two dozen golf balls for your birthday. You are in the middle of a procurement in which your neighbor is bidding. What do you do.

This is a scenario that places the government employee in a difficult position. Should the employee be concerned that the gift could be perceived as a gratuity associated with the government contract? Why is it wrong to accept a gift from a neighbor with whom you frequently socialize?

The State of Colorado recognized the fact that conflicts may arise between the public duty of a citizen and his or her private interests. A Code of Ethics has been established to serve as a guide for the government employees. Section 24-18-101 et seq. CRS (1999) provides rules of conduct for all public officers, members of the general assembly, local government officials, and employees. There are two specific prohibitions that apply to the above example:

1. IT IS PROHIBITED TO DISCLOSE OR USE CONFIDENTIAL INFORMATION ACQUIRED IN THE COURSE OF OFFICIAL DUTIES IN ORDER TO FURTHER SUBSTANTIALLY YOUR PERSONAL FINANCIAL INTERESTS; OR
2. IT IS PROHIBITED TO ACCEPT A GIFT OF SUBSTANTIAL VALUE OR A SUBSTANTIAL ECONOMIC BENEFIT TANTAMOUNT TO A GIFT OF SUBSTANTIAL VALUE:
 - A. WHICH WOULD TEND IMPROPERLY TO INFLUENCE A REASONABLE PERSON IN HIS POSITION TO DEPART FROM THE FAITHFUL AND IMPARTIAL DISCHARGE OF HIS PUBLIC DUTIES; OR
 - B. WHICH HE KNOWS OR WHICH A REASONABLE PERSON IN HIS POSITION SHOULD KNOW UNDER THE CIRCUMSTANCES IS PRIMARILY FOR THE PURPOSE OF REWARDING HIM FOR OFFICIAL ACTION HE HAS TAKEN.

The employee must decide the nature and circumstances surrounding the gift. Is it in response to the previous information that he has disclosed to the CEO neighbor? Was it designed to influence his decision in the current procurement? Was it an innocent gift, not of substantial value, from one friend to another?

The first issue is whether the employee has disclosed confidential information to the neighbor concerning past procurements or the current procurement for which he or she is now being rewarded by the CEO neighbor. Whether or not the golf balls would further the employee's financial interests, the employee should not breach the fiduciary duty to maintain the confidential information. Section 24-18-108 of the Code prohibits the assistance to any person for a fee or other compensation in obtaining a contract, claim, license, or any other economic benefit from any state agency.

The second issue is whether the two dozen golf balls is a "gift of substantial value". Substantial Value is not defined in the Code. The Code does make an exception for "an occasional non-pecuniary gift, insignificant in value. Even if the gift would not be considered of substantial value, it is the timing of the gift that makes it suspect. The government employee is responsible for a procurement in which his neighbor is bidding. A "Procurement Official" as defined by the Procurement Code, has a duty to ensure the fair and equitable treatment of all persons who deal with the Colorado procurement system. An additional duty is to provide safeguards for the maintenance of a procurement system of quality and integrity. As well meaning as the gift might be, would those golf balls improperly influence the "reasonable person"?

(Concluded on Page 4)

- July 2000 Update - Colorado Contract Procedures and Management Manual

By John Ivy, DFP

The Colorado Contract Procedures and Management Manual (*Manual*) was published in August 1997 and revised in January 1999. The Manual remains the single most informative and helpful resource available to state employees involved in the state contracting process. In an effort to make the *Manual* even better, more user friendly, and to update it with the new policies and procedures adopted since its revision, the *Manual* will be republished in its entirety in fiscal year 2001.

In order to update the *Manual*, the State Contract Unit needs your help. If you have noticed any areas in the Manual that are confusing or need to be rewritten, please e-mail me (preferred) or give me a call where you suggested change can be logged in and considered for inclusion in the new and improved *Manual*.

(Continued from Page 3)

Procurement Integrity

The difficulty facing this employee is that even an "appearance" of a conflict of interest can be as damaging as an actual conflict of interest. The Code prohibits the acceptance of "gifts of substantial value which would tend improperly to influence a reasonable person in his position from the faithful and impartial discharge of his public duties". The acceptance of a gift by a purchasing agent from a prospective bidder certainly creates the "appearance" that the government employee would give preferential treatment to that bidder, in part, due to the gift.

A government employee who participates in procurement functions must maintain a heightened awareness of those situations that either create a conflict of interest or creates an appearance of a conflict of interest. The government employee could avoid this particular situation by thanking the neighbor for his thoughtfulness but not accepting the gift.

State Contract Unit Update

By Phil Holtmann, DFP

The authority and responsibility for the Privatization Program has been transferred from the Executive Director of the Department of Personnel to the State Controller, Arthur Barnhart. The State Controller's Office will be reviewing the policies and procedures of the program to determine if there are any improvements that can be implemented. Since, Yvonne Anderson, the program's administrator, is working in the Contract Unit of the State Controller's Office there will be no immediate effect on state agencies seeking program approval of commitments to obtain personal services. However, if anyone has a suggestion about improving the current process they should contact Yvonne Anderson or me with their suggestions.

The State Controller's Office is working with the State Purchasing Office to develop a policy, which will apply to all state agencies, for emergency procurements. The policy will outline the steps a state agency must follow to be in compliance with the State Fiscal Rules when an emergency has been declared and a procurement is necessary. This policy will make the issuance of the required commitment voucher for the emergency procurements easier for state agencies than the current process.

In order to facilitate the policy that will allow agencies to process a contract for less than \$25,000 without a formal legal review, Yvonne Anderson has been trained and will be delegated to review and approve state contracts for the State Controller. This delegation will provide the contract unit the additional resources necessary to not only process their "normal" contracts, but also to spend the additional time necessary to perform the quasi legal review for those contracts less than \$25,000.

In a legal opinion, dated January 3, 2000, the Attorney General determined that the vendor offset provision, Special Provision No. 9, is not required when contracting with other governmental entities. Therefore, a new policy will be developed that allows Special Provision No. 9 to be stricken from contracts with other governmental agencies when it becomes necessary to conclude negotiations **and** at the request of the other governmental agency. The deletion of this provision in inter-governmental contracts will no longer require a State Fiscal Rule waiver.

On March 1, 2000

Requesting State Fiscal Rule Waivers Just Gets Easier

By John Ivy, DFP

As a result of an administrative rule making hearing, effective March 1, 2000 the Administrative Hardship provision of the State Fiscal Rules will be revised to make it easier for state agencies to request waivers of State Fiscal Rules. As of March 1st, the requirement of processing the waiver request through the chief executive officer will be eliminated. All that will be necessary is to notify the chief executive officer of the request. The text of the new Administrative Hardship provision is provided below.

ADMINISTRATIVE HARDSHIP

Should any of these Fiscal Rules create undue administrative or financial hardship on a State Agency, a written request for exemption and/or alternative policy may be submitted by the State Agency's chief fiscal officer to the State Controller with notification to the State Agency's chief executive officer.

In order to comply with the State Fiscal Rules and expedite the waiver process, the following procedure is recommended to all state agencies and institutions. Since the CFO is the only person that has the authority to request a waiver of a State Fiscal Rule, all waiver requests must come from the CFO to the state controller. If someone identifies the need for a waiver other than the CFO, like a program person or an attorney working on a contract, the request must be communicated to the CFO. After reviewing the circumstances and agreeing that a waiver is necessary, the CFO will endorse the waiver request and send it to the state controller for review and approval.

The easiest and quickest way to comply with the State Fiscal Rules and get a waiver approved is to use e-mail. The person that identifies the need for a waiver, if it is not the CFO, e-mails the CFO sufficient details and facts to justify the request. The CFO reviews the justification and makes sure that it is complete and accurate, endorses the e-mail request and then forwards the e-mail to the state controller with a copy to the state agency's chief executive officer. By using e-mail to transmit the request to the state controller, all mailing time is eliminated. State Fiscal Rule waivers can be approved in minutes instead of days. The current record for approving a routine waiver request using the above e-mail procedure is less than 10 minutes.

Those non-delegated state agencies, which must send their contracts to the state controller, may use the above process by simply printing the e-mail request from their CFO and attaching it to the contract prior to routing it to the state controller for approval. When the contract is received, the State Fiscal Rule waiver request will be reviewed prior to the contract's execution. The state agency will know that the waiver request is approved if the contract is executed.

Send all e-mail requests for State Fiscal Rule waivers to me or copy me on the e-mail request where I can review the requests in a timely manner. My e-mail address is "john.ivy@state.co.us". Please review this procedure with all staff members who may need to request a State Fiscal Rule waiver. Waiver requests received from anyone other than the state agency's CFO will be referred to the CFO for endorsement, prior to being reviewed by the state controller.

**General Support Services
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State Contracting Unit
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CCIT Agenda

February 16th at 9:00 a.m.

(See Attached Map for Directions)



CCIT Meeting

Wednesday, February 16, 2000
Camp George West – Golden, Colorado
Building 100

Agenda

9:00-9:10	Facility Briefing	Chris Trujillo
9:10-9:30	New Century Colorado	Staff Briefing
9:30-10:00	Privatization Update	Yvonne Anderson
10:00-10:15	Break	
10:15-10:30	Late Grant Contracts Policy	David Kaye
10:30-11:00	Contract Improvements	Phil Holtmann
11:00-noon	Comments & Questions	Central Approvers

On the World Wide Web at :

www.sco.state.co.us/

CONTRACT PROCEDURES AND MANAGEMENT
MANUAL
[contract/contract.htm](http://www.sco.state.co.us/contract/contract.htm)

PRIVATIZATION PROGRAM PROCEDURES AND
FORMS
[private/private.htm](http://www.sco.state.co.us/private/private.htm)

CURE
[cure/cure.htm](http://www.sco.state.co.us/cure/cure.htm)